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By: **Delegate Hubbard**

Introduced and read first time: January 29, 2004

Assigned to: Health and Government Operations

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A BILL ENTITLED

1 AN ACT concerning

2 **Procurement - Security for Construction Contracts - Retainage**

3 FOR the purpose of providing that the certain provisions regarding retainage in a  
4 construction contract awarded by a public body do not apply to an entity that is  
5 subject to certain other provisions regarding retainage in a State procurement  
6 contract for construction; and generally relating to construction contracts  
7 awarded by a public body.

8 BY repealing and reenacting, without amendments,  
9 Article - State Finance and Procurement  
10 Section 13-225  
11 Annotated Code of Maryland  
12 (2001 Replacement Volume and 2003 Supplement)

13 BY repealing and reenacting, with amendments,  
14 Article - State Finance and Procurement  
15 Section 17-110  
16 Annotated Code of Maryland  
17 (2001 Replacement Volume and 2003 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
19 MARYLAND, That the Laws of Maryland read as follows:

20 **Article - State Finance and Procurement**

21 13-225.

22 (a) (1) In this section the following words have the meanings indicated.

23 (2) "Payment security" has the meaning stated in § 17-101 of this  
24 article.

25 (3) "Performance security" has the meaning stated in § 17-101 of this  
26 article.

1 (b) (1) If a contractor has furnished 100% payment security and 100%  
2 performance security in accordance with Title 17, Subtitle 1 of this article under a  
3 State procurement contract for construction, the percentage specified in the contract  
4 for retainage may not exceed 5% of the total amount.

5 (2) In addition to retainage, a primary procurement unit and the  
6 Maryland Transportation Authority may withhold from payments otherwise due a  
7 contractor any amount that the unit reasonably believes necessary to protect the  
8 State's interest.

9 (3) Retainage withheld by a primary procurement unit and the  
10 Maryland Transportation Authority may be deposited in an interest-bearing escrow  
11 account in accordance with § 15-108 of this article.

12 (c) (1) A contractor may not retain a percentage of payments due a  
13 subcontractor that exceeds the percentage of payments retained by the primary  
14 procurement unit or the Maryland Transportation Authority.

15 (2) Paragraph (1) of this subsection may not be construed to prohibit a  
16 contractor from withholding any amount in addition to retainage if the contractor  
17 determines that a subcontractor's performance under the subcontract provides  
18 reasonable grounds for withholding the additional amount.

19 (d) (1) A subcontractor may not retain a percentage of payments due a lower  
20 tier subcontractor that exceeds the percentage of payments retained from the  
21 subcontractor.

22 (2) Paragraph (1) of this subsection may not be construed to prohibit a  
23 subcontractor from withholding any amount in addition to retainage if the  
24 subcontractor determines that a lower tier subcontractor's performance under the  
25 subcontract provides reasonable grounds for withholding the additional amount.

26 (e) If retainage has been placed in escrow under § 15-108 of this article, each  
27 payment of retainage shall include a pro rata portion of interest earned.

28 (f) This section may not be construed to limit the application of the provisions  
29 of Title 17, Subtitle 1 of this article.

30 17-110.

31 (A) SUBSECTIONS (B)(1), (2), AND (3), (C)(1) AND (2), AND (D)(1) AND (2) OF THIS  
32 SECTION DO NOT APPLY TO AN ENTITY THAT COMPLIES WITH THE PROVISIONS OF §  
33 13-225 OF THIS ARTICLE.

34 [(a)] (B) (1) If a contractor has furnished 100% payment security and 100%  
35 performance security in accordance with this subtitle under a contract for  
36 construction awarded by a public body, the percentage specified in the contract for  
37 retainage may not exceed 10% of the total amount for the first 50% of the contract.

1           (2)     Unless a public body demonstrates the need to retain more than 5%  
2 to protect the public interest, after 50% of the contract is completed, a public body  
3 may retain only 5% of the total amount.

4           (3)     In addition to retainage, a public body may withhold from payments  
5 otherwise due a contractor any amount that the public body reasonably believes  
6 necessary to protect the public body's interest.

7           (4)     Except as provided in paragraph (5) of this subsection, within 120  
8 days after satisfactory completion of a contract for construction, a public body shall  
9 release any retainage due to the contractor.

10          (5)     If there is a dispute or contract claim between the contractor and the  
11 public body concerning the satisfactory completion of a contract for construction, the  
12 public body shall release the retainage to the contractor within 120 days after the  
13 resolution of the dispute or contract claim.

14   [(b)]   (C)     (1)     A contractor may not retain a percentage of payments due a  
15 subcontractor that exceeds the percentage of payments retained by the public body.

16          (2)     Paragraph (1) of this subsection may not be construed to prohibit a  
17 contractor from withholding any amount in addition to retainage if the contractor  
18 determines that a subcontractor's performance under the subcontract provides  
19 reasonable grounds for withholding the additional amount.

20   [(c)]   (D)     (1)     A subcontractor may not retain a percentage of payments due a  
21 lower tier subcontractor that exceeds the percentage of payments retained from the  
22 subcontractor.

23          (2)     Paragraph (1) of this subsection may not be construed to prohibit a  
24 subcontractor from withholding any amount in addition to retainage if the  
25 subcontractor determines that a lower tier subcontractor's performance under the  
26 subcontract provides reasonable grounds for withholding the additional amount.

27   [(d)]   (E)     This section may not be construed to limit the application of the  
28 remaining provisions of this subtitle.

29   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
30 October 1, 2004.